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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEN WALTERS and JOHN BONILLA, in their) No. C 04 0304 SBA
respective capacities as Trustees of the)
OPERATING ENGINEERS HEALTH AND)
WELFARE TRUST FUND FOR NORTHERN)
CALIFORNIA; BOARD OF TRUSTEES OF)
THE PENSION TRUST FUND FOR)
OPERATING ENGINEERS; BOARD OF)
TRUSTEES OF THE PENSIONED)
OPERATING ENGINEERS HEALTH AND)
WELFARE FUND; BOARD OF TRUSTEES)
OF THE OPERATING ENGINEERS AND)
PARTICIPATING EMPLOYERS PRE-)
APPRENTICESHIP, APPRENTICE AND)
JOURNEYMEN AFFIRMATIVE ACTION)
TRAINING FUND; BOARD OF TRUSTEES)
OF THE OPERATING ENGINEERS)
VACATION AND HOLIDAY PLAN,)
Plaintiffs,)
v.)
MAGNUM PACIFIC, INC., A California)
Corporation,)
Defendant.)
)

The parties hereby stipulate and agree as follows:

1. Ken Walters and John Bonilla, In Their Respective Capacities As Trustees Of The Operating Engineers Health And Welfare Trust Fund For Northern California; Board Of Trustees Of The Pension Trust Fund For Operating Engineers; Board Of Trustees Of The Pensioned

1 Operating Engineers Health And Welfare Fund; Board Of Trustees Of The Operating Engineers
 2 And Participating Employers Pre-Apprenticeship, Apprentice And Journeymen Affirmative Action
 3 Training Fund; Board Of Trustees Of The Operating Engineers Vacation And Holiday Plan,
 4 ("Trust Fund") have brought the above-captioned action against Defendant Magnum Pacific Inc.
 5 ("Magnum Pacific"). The Trust Fund, in this action, seeks \$116,767.85 for unpaid fringe benefit
 6 contributions from August 2000 to January 2004 and liquidated damages and interest from August
 7 2000 to present, plus audit entry, pursuant to the Master Agreement for Northern California
 8 Operating Engineers Local Union No. 3 ("Master Agreement") and the relevant trust agreements
 9 establishing Plaintiff Trust Funds. The parties, by and through their counsel of record, hereby
 10 stipulate and agree to settle this action under the following terms:

11 2. Magnum Pacific agrees to have judgment entered against it in the amount of
 12 \$75,034.42, which includes \$33,495.94 in delinquent fringe benefit contributions and \$889.48 in
 13 underreported hours for the period January 1999 through April 2004, plus \$30,000.25 in interest
 14 and \$10,649.75 in attorneys' fees and costs.

15 3. The parties hereto stipulate and agree that Magnum Pacific shall remit an initial
 16 payment of **\$10,000.00** to the Trust Fund's office no later than July 15, 2005. The rest of the
 17 payments, totaling **\$65,034.42** shall be made over a six-month period, with six monthly
 18 installments due on the 1st of every month as follows:

<u>Payment No.</u>	<u>Due Date</u>	<u>Amount Due</u>
No. 1	August 1, 2005	\$10,839.07
No. 2	September 1, 2005	\$10,839.07
No. 3	October 1, 2005	\$10,839.07
No. 4	November 1, 2005	\$10,839.07
No. 5	December 1, 2005	\$10,839.07
No. 6	January 1, 2006	\$10,839.07

27 All payments made pursuant to this Stipulation for Entry of Judgment shall be made payable to the
 28

1 Operating Engineers Local Union No. 3 Trust Funds and mailed to the Operating Engineers Local
 2 Union No. 3 Trust Fund Multi-Services Office, 1620 South Loop Road, Alameda, CA 94502-7090,
 3 Attn: Wayne McBride.

4. The parties hereto further stipulate and agree that if Magnum Pacific fails to make
 5 the initial \$10,000.00 payment or any of the monthly installments provided for above in paragraph
 6 3, the Trust Fund may then execute upon the Judgment for the full amount of \$75,034.42, minus
 7 the amount of any payments actually received, together with the interest that shall have accrued
 8 thereon, *plus \$83,272.91 in liquidated damages on the fringe benefit contributions that Plaintiffs
 9 would have pursued against Magnum Pacific absent this Agreement.* Failure of the Trust Fund to
 10 exercise such option shall not constitute a waiver of the right to exercise it in the event of a
 11 continuing or subsequent default.

12. Additionally, Magnum Pacific agrees to remain current on all fringe benefit
 13 contributions, which become due and payable to the Operating Engineers Trust Funds during the
 14 term of this Stipulated Judgment. It is a material condition of this Stipulated Judgment that
 15 Magnum Pacific remain current on all such fringe benefit contributions for all covered work and
 16 failure to do so shall constitute default.

17. If Magnum Pacific defaults in the making of any of said payments or any part
 18 thereof, and if the Trust Fund consults legal counsel with respect thereto, there shall be added to
 19 Magnum Pacific's obligation under this Stipulation for Entry of Judgment reasonable attorneys'
 20 fees, court costs and all other reasonable expenses incurred by the Trust Fund in connection with
 21 such suit or claim, including any and all appellate proceedings therein.

22. The provisions set forth in this Stipulation for Entry of Judgment are not in violation
 23 of any state or federal law. However, if any portion of said stipulation is found to be in violation of
 24 any state or federal law, then the total amount of the Stipulation for Entry of Judgment then due
 25 shall immediately become due and payable.

26. Plaintiffs hereby stipulate and agree that once Magnum Pacific has complied with
 27 paragraph 3 of the Stipulation for Entry of Judgment, *Plaintiffs shall file a satisfaction of judgment*

1 | with the Court.

2 9. Magnum Pacific acknowledges to the Trust Fund that it has had the opportunity to
3 be represented by independent legal counsel of its own choice throughout all of the negotiations
4 that preceded the execution of this Stipulation for Entry of Judgment. Magnum Pacific further
5 acknowledges that they have had adequate opportunity to perform whatever investigation or
6 inquiry they may deem necessary in connection with the subject matter of this Magnum Pacific
7 prior to its execution, and agree with the delivery and acceptance of the considerations specified in
8 this Stipulation for Entry of Judgment.

9 The parties hereto mutually state that they have read the foregoing Stipulation for Entry of
10 Judgment and are fully aware of its contents and legal facts.

11 Dated: 2/18, 2005

MAGNUM PACIFIC, INC.

By:

MARK SERRANO
President of Magnum Pacific, Inc.

15 Dated: 8/19, 2005

SIMPSON, GARRITY & INNES
Professional Corporation

By:

PAUL V. SIMPSON
Attorneys for Defendant

19 Dated: 8/25, 2005

OPERATING ENGINEERS LOCAL NO. 3 TRUST FUNDS

By:

~~WAYNE MCBRIDE~~
Collection Manager for Plaintiffs

24 Dated: 8/30, 2005

**WEINBERG, ROGER & ROSENFELD
A Professional Corporation**

By

See also Plaintiffs
NICOLE M. PHILLIPS
Attorneys for Plaintiffs

PROPOSED ORDER

The Parties having so requested, Judgment is hereby entered against Defendant Magnum Pacific, Inc. as set forth in the foregoing Stipulation for Entry of Judgment.

Dated: 9-12-05

SANDRA B. ARMSTRONG
UNITED STATES DISTRICT COURT JUDGE



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